IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No.319 of 2007

Nitin C. Kochar. .. ... Petitioner

v/s.

Neminath Jain Brahmacharya Ashram & ors. .. ... Respondents

Mr.Shaikh Nasir Masih for petitioner.
Mr.M.S.Karnik for res.Nos.4 & 5.
Miss P.P. Tendulkar for res.nos.6 & 9.

CORAM : SMT.RANJANA DESAI &

SMT.ROSHAN DALVI, JJ.

Dated : 22nd November 2007

P.C. :

1. The petitioner is aggrieved by the orders passed by respondent nos.3 and 4 regarding non-grant of the trained graduate's scale to the petitioner with effect from 1.8.2002.

2. We heard learned counsel for the petitioner. We also heard learned counsel for respondent nos.4 and 5 and learned AGP for respondent nos.1, 2 and 3.

3. Our attention is drawn to order dated 16th August 2005 passed by a Division Bench of this court in earlier petition

filed by the petitioner. It reads thus:-

> " When the matter was called out for hearing today Shri Karnik, learned counsel for respondent nos.1, 2, 6 and 7 tendered a document in the court which is accepted and taken on record which goes to show that by communication dated 8th August, 2005 the petitioner is granted revised scale from 12.1.2005. After this grant if the petitioner has any grievance as to the date from which it is to be granted it is open for the petitioner to approach the Education Officer. Keeping this right open for the petitioner, the petition is disposed of accordingly."

4. It appears that thereafter the Education Officer considered the grievance of the petitioner and passed an order on 12/14.7.2006. The said order was communicated to the petitioner. Learned counsel for the petitioner contended that the Education Officer has not considered the grievance of the petitioner in its proper perspective. He submitted that the Education Officer ought to have taken into consideration Rule 12 of the Maharashtra Employees of Private Schools (Conditions of Service) Rules, 1981 and the schedule

thereunder. He has drawn our attention to paragraph 17 of the affidavit of Shri Ashok J. Sonawane, Deputy Education Officer (Secondary), Zilla Parishad, Nasik, and contended that, in fact, the respondents have accepted the petitioner's case. Learned counsel relied upon a judgment of this court in **Lakhwinder Kaur Gurai vs. Garison Children Education Society & ors. 2006 (5) Maharashtra Law Journal 332**. He submitted that reliance placed by the respondents on various government resolutions is totally misplaced as government resolutions cannot override the provisions of the MEPS Act and the Rules, as held by this court in **Lakhwinder's case (supra)**.

5. We do not want to express any opinion on the rival contentions but there can be no doubt about the proposition that government resolutions cannot override the provisions of law. It appears that attention of the Education Officer was not drawn to the judgment of this court in **Lakhwinder's case (supra).**

6. We, therefore, direct the 3rd respondent- Education Officer to

consider the representation of the petitioner dated 29th August 2005 afresh, in the light of the judgment of this court in **Lakhwinder's case (supra)**, after hearing all concerned, including the management and pass appropriate orders thereon within a period of six weeks from the date of this order and communicate result of the same to the petitioner. This order may not be interpreted to mean that we have directed the 3rd respondent to consider the petitioner's representation favourably. The representation may be considered independently in accordance with law.

7. Petition disposed of in the aforesaid terms.

(SMT.RANJANA DESAI, J.)

(SMT.ROSHAN DALVI, J.)